Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
REPORT TO CONGRESS	)	IB Docket No. 04-158
REGARDING THE ORBIT ACT	)	Report No. SPB-206
	)	

To: The Commission

REPLY COMMENTS OF SES AMERICOM, INC.

SES AMERICOM, Inc. ("SES AMERICOM"), by its attorneys and pursuant to a Public Notice issued by the Federal Communications Commission (the "FCC" or the "Commission"),[1] hereby submits this reply to comments filed by Inmarsat Ventures Limited ("Inmarsat"),[2] Stratos Mobile Networks, Inc. and Stratos Communications, Inc.,[3] Lockheed Martin Corporation,[4] and Mobile Satellite Ventures Subsidiary LLC,[5] in connection with the Commission's Report to Congress Regarding the ORBIT Act, to be submitted on June 15, 2004, pursuant to Section 646 of the Open-

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1 Public Notice, Report No. SPB-206, IB Docket No. 04-158 (Apr. 23, 2004).

2 Comments of Inmarsat Ventures Subsidiary LLC, IB Docket No. 04-158 (filed May. 7, 2004) (the "Inmarsat Comments").

3 Comments of Stratos Mobile Networks, Inc. and Stratos Communications, Inc., IB Docket No. 04-158 (filed May. 7, 2004).

4 Comments of Lockheed Martin Corporation, IB Docket No. 04-158 (filed May. 7, 2004).

5 Comments of Mobile Satellite Ventures Subsidiary LLC, IB Docket No. 04-158 (filed May. 7, 2004).

market Reorganization for the Betterment of International Telecommunications Act (the "ORBIT Act").[6]

In its comments filed earlier in this proceeding, SES AMERICOM demonstrated to the Commission that Inmarsat has failed to comply with Section 621 of the ORBIT Act by conducting a private equity transfer and a quasi-public debt offering in lieu of the equity IPO required by the Act.[7] SES AMERICOM requested that the Commission, in order to preserve the integrity of the ORBIT Act, issue a firm rejection of Inmarsat's statement of compliance with Section 621. Inmarsat's comments not only fail to alleviate the concerns expressed by SES AMERICOM, but they in fact raise additional concerns that should provide further impetus to the Commission to reject Inmarsat's transactions.

I. INMARSAT FAILS TO DEMONSTRATE THAT IT HAS COMPLIED WITH SECTION 621 OF THE ORBIT ACT.

In its comments, Inmarsat asserts that it has complied with Section 621 simply because it claims to have satisfied certain goals of the ORBIT Act, and claims to have done so to a greater extent than might be expected under an equity IPO.[8] In making this assertion, Inmarsat either ignores, or fails to recognize, the fundamental distinction between satisfying certain of the goals of the ORBIT Act, and doing so in the manner prescribed by Congress. Just as in football, hockey, or soccer, it is not enough simply to reach the goal; one must do so within the prescribed playing field.

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6 ORBIT Act, Pub. L. No. 106-180, 115 Stat. 48 (2000), as amended, Pub. L. No. 107-223, 116 Stat. 1480, § 646 (2002).

7 *See* Comments of SES AMERICOM, Inc., IB Docket No. 04-158 (filed May 7, 2004).

8 *See* Inmarsat Comments at 3-6.

Congress did not state that Inmarsat could achieve compliance with Section 621 by undertaking any conceivable transaction or series of transactions that substantially dilutes Inmarsat's ownership interests and establishes Inmarsat's commercial independence. Instead, Congress provided that Inmarsat could achieve compliance only by effectuating a single type of transaction -- an equity IPO -- that accomplishes the foregoing goals. Inherent in Congress' designation of the equity IPO as the prescribed form of compliance is a desire for Inmarsat to achieve its dilution and independence by broadening the scope of its shareholder base, by becoming a publicly held and traded company, and by achieving all of the other ends that are characteristic of an equity IPO.

Because Inmarsat has failed to achieve each of these goals of the ORBIT Act, and because Inmarsat has failed to move forward in the particular manner prescribed by Congress, it is immaterial to the question of compliance that Inmarsat claims to have achieved certain alleged ORBIT Act goals more effectively through its own methods than it could have through an equity IPO. Nowhere in the ORBIT Act did Congress invite Inmarsat or the FCC to brainstorm a better way than an equity IPO to dilute ownership interests or to achieve commercial independence.

Likewise, nowhere in the ORBIT Act did Congress provide that weakness in financial markets provides a proper basis for Inmarsat to substitute for an equity IPO what it perceives to be a more efficient means of achieving dilution. Inmarsat insinuates otherwise by citing to a recent statement in which Congressman Dingell opined that forcing INTELSAT to conduct an IPO under currently "unfavorable" market conditions

would prove detrimental to INTELSAT's owners and investors.[9] Congressman Dingell made this statement, not to advocate that INTELSAT abandon its IPO obligations due to market weakness, but rather to support a bill granting INTELSAT an extension of its IPO deadline. In fact, while Congressman Dingell raised issues generally regarding the ORBIT Act, the Congressman urged that Congressional action (as opposed to unilateral action by Inmarsat or INTELSAT) should be the means by which these issues are addressed.[10]

II. INMARSAT FAILS TO DEMONSTRATE THAT A FINDING BY THE COMMISSION OF INMARSAT'S COMPLIANCE WITH SECTION 621 IS REQUIRED TO PROTECT THE PUBLIC INTEREST.

In addition to the above, Inmarsat is wrong in suggesting that a finding of Inmarsat's compliance with Section 621 is necessary to preserve the supposed competitive benefits of Inmarsat's access to U.S. markets and to ensure the continuity of "critical services" provided by Inmarsat to U.S. government agencies.[11]

With regard to competition, it is important to note that Inmarsat's impact on competition in U.S. markets is not a criterion for determining Inmarsat's compliance

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[9] *Id.* at 5 (quoting *Cong. Rec.* H2600 (May 5, 2004)). It is not clear why Inmarsat believes that Congressman Dingell is qualified as an expert on the relative strength of financial markets for IPOs. As both SES AMERICOM and others have pointed out, it is telling that Inmarsat, in the context of its pending ORBIT Act request, has failed to produce what it has produced several times in past Commission proceedings: a letter or other statement from its investment bankers (presumably more expert in these matters than Congressman Dingell) regarding whether an Inmarsat IPO can be achieved in current market conditions. *See* Reply of SES AMERICOM, Inc., File No. SAT-MSC-20040210-00027 (filed Apr. 30, 2004) at 13 ("Reply of SES AMERICOM"); Comments of SES AMERICOM, Inc., File No. SAT-MSC-20040210-00027 (filed Apr. 5, 2004) at 14 n.51.

[10] *Cong. Rec.* H2600 (May 5, 2004).

[11] Inmarsat Comments at 4.

with Section 621; to the contrary, Inmarsat's compliance with Section 621 is a criterion for determining Inmarsat's impact on competition in U.S. markets. In fact, Section 601(b)(2) of the ORBIT Act requires the Commission to determine that "competition in the telecommunications markets of the United States will be harmed" unless the Commission finds that Inmarsat has conducted an equity IPO in accordance with the requirements of Section 621.

There is furthermore no basis for Inmarsat to claim that the provision of critical services to U.S. government agencies would be compromised by the Commission's rejection of Inmarsat's statement of compliance with Section 621. The ORBIT Act expressly prohibits the Commission from imposing any restriction on Inmarsat that would preclude it from offering services to the U.S. Government that are used or required for national security, law enforcement, or public health and safety purposes.[12]

To the extent that the public interest harms of which Inmarsat warns are looming consequences of the Commission's rejection of Inmarsat's bid for a declaratory ruling that it is in compliance, such consequences are by no means unavoidable. Inmarsat can still use its remaining time under the current IPO deadline to conduct an equity IPO in accordance with Section 621. Inmarsat furthermore is empowered to request an IPO deadline extension from the Commission, and indeed has already attempted to request such an extension in the event that its statement of compliance is rejected by the

[12] ORBIT Act, § 601(b)(1)(C).

Commission.[13] Even if the Commission denies this request, Inmarsat may still approach Congress for a deadline extension, as Intelsat recently has been successful in doing.[14]

The Commission must also remember that, whatever consequences may ensue from Inmarsat's failure to comply with Section 621, these consequences ultimately are of Inmarsat's own making. Neither Congress nor the Commission invited Inmarsat to deviate from Section 621; Inmarsat alone chose to do so, and Inmarsat alone should bear full responsibility for its risk-taking. The Commission should not compromise the integrity of the ORBIT Act in order to protect Inmarsat from the consequences of its own non-compliant behavior.[15]

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[13] *See* Consolidated Response of Inmarsat, File No. SAT-MSC-20040210-00027 (filed Apr. 20, 2004) at 38. As SES AMERICOM pointed out, Inmarsat's request in its Response – unsupported by any investment bank letter or other evidence – is likely not cognizable by the Commission. Reply of SES AMERICOM at 22 n.63.

[14] Congress recently passed a bill that would extend Intelsat's IPO deadline until June, 2005, with the possibility of a further extension by the Commission until December 31, 2005. *See* S. 2315, 108th Cong. (2004).

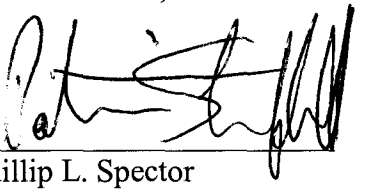
[15] *See* Reply of SES AMERICOM at 23.

III. CONCLUSION

Inmarsat's comments fail to demonstrate to the Commission that Inmarsat has complied with the IPO requirements of Section 621 of the ORBIT Act. The Commission should act swiftly to reject Inmarsat's statement of compliance with Section 621, so that the Commission can report to Congress that the Commission has executed faithfully its charge to implement and enforce the terms of the ORBIT Act.

Respectfully submitted,

SES AMERICOM, INC.

By: 

Phillip L. Spector
Patrick S. Campbell
Brett M. Kitt
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1615 L Street, N.W.
Suite 1300
Washington, D.C. 20036
(202) 223-7300

Scott B. Tollefsen
Nancy Eskenazi
SES AMERICOM, INC.
4 Research Way
Princeton, NJ 08540
(609) 987-4000

Attorneys for SES AMERICOM, Inc.

May 14, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May 2004, I caused a copy of the foregoing Reply of SES AMERICOM, Inc., to be served by first-class mail on the following:

Alan Auckenthaler
Vice President & General Counsel
Inmarsat, Inc.
1050 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 200036

Gary M. Epstein
John P. Janka
Alexander D. Hoehn-Saric
Latham & Watkins LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304

Attorneys for Inmarsat Ventures Limited

Alfred M. Mamlet
Chun Hsiang Mah
Steptoe & Johnson LLP
13330 Connecticut Ave, N.W.
Washington, D.C. 20036

Attorneys for Stratos Mobile Networks, Inc. and Stratos Communications, Inc.

Lon C. Levin
Vice President
Mobile Satellite Ventures Subsidiary LLC
10802 Park Ridge Boulevard
Reston, VA 20191

Bruce D. Jacobs
David S. Konczal
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037

Attorneys for Mobile Satellite Ventures Subsidiary LLC

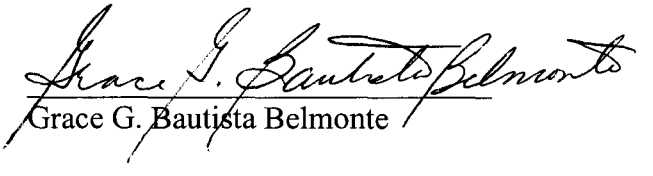
Gerald Musarra
Vice President Trade and Regulatory Affairs
Washington Operations
Lockheed Martin Corporation
Crystal Square 2, Suite 300
1725 Jefferson Davis Highway
Arlington, VA 22202

Patrick J. Cerra
Vice President
Intelsat LLC
3400 International Drive
Washington, D.C. 20008

Qualex International
Portals II
445 12th Street, S.W.
CY-B4202
Washington, D.C. 20554

Andrea Kelly
Satellite Division, International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Marilyn Simon
Satellite Division, International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554



Grace G. Bautista Belmonte